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TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001023-MR

NORMAN WILSON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 14-CI-000854

KENTUCKY UNEMPLOYMENT INSURANCE
COMMISSION AND UNIVERSAL LINEN

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: DIXON, D. LAMBERT AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Norman Wilson appeals from an order of the Jefferson Circuit Court dismissing his complaint seeking judicial review of the denial of unemployment compensation benefits. The circuit court ruled the complaint was not properly verified as required by Kentucky Revised Statutes (KRS) 341.450.

We conclude Wilson substantially complied with the statute and reverse and remand.

Wilson's complaint was labeled a verified complaint and signed by counsel. An attempt was made at verification on a separate page after the last page of the complaint. That page stated as follows:

VERIFICATION

I, Norman Wilson, have read in [its] entirety the foregoing plea[ding], and to the best of my knowledge the information contained therein is truthful and accurate.

Although Wilson signed below this verification statement, his signature was not notarized.

Wilson's employer, Universal Linen, filed a motion to dismiss arguing the complaint was not properly verified in the manner required by KRS 341.450. The circuit court granted the motion to dismiss and Wilson appealed.

KRS 341.450(1) provides that judicial review of a denial of unemployment compensation requires the filing of a complaint which "shall state fully the grounds upon which review is sought, assign all errors relied on, and shall be verified by the plaintiff or his attorney." Wilson argues he substantially complied with the requirements of KRS 341.450 in accordance with *Shamrock Coal Co., Inc. v. Taylor*, 697 S.W.2d 952 (Ky.App. 1985), *abrogated on other grounds by Kentucky Unemployment Ins. Comm'n v. Cecil*, 381 S.W.3d 238, 247 (Ky. 2012), because he made a sufficient attempt to verify the complaint through

his statement of verification and signature. Alternatively, he argues his counsel's signature as an officer of the court was sufficient to attest to his verification.

In *Taylor v. Kentucky Unemployment Ins. Comm'n*, 382 S.W.3d 826, 829 (Ky. 2012), the Kentucky Supreme Court examined whether a petition for review of a decision of the Kentucky Unemployment Insurance Commission properly invoked the circuit court's jurisdiction where Taylor's attorney signed the petition but no verification clause was included and it was not signed by Taylor. The Court explained that while an attorney's signature on the petition might serve as a certification of it, this was insufficient to constitute a verification because "[v]erification . . . requires the statement of a third party . . . showing that the declarant has sworn an oath to the truthfulness of what is asserted in the document." *Id.* at 834. The Court reasoned "courts have no jurisdiction over an appeal from an administrative agency action unless every statutory precondition is satisfied." *Id.* at 831 (footnote omitted). The Court concluded failure to comply with the verification requirement deprived the court of jurisdiction. *Id.* at 832. *See Pickhart v. U.S. Post Office*, 664 S.W.2d 939, 940 (Ky.App. 1983).

The Court examined *Shamrock Coal* and upheld its continued validity but distinguished it, explaining:

Although the opinion in *Shamrock Coal* does not explain the specific defect in the petition for review, it appears that it did not reflect that the claimant was properly sworn in connection with his verification effort. In holding that the imperfection was not fatal to the claim, the court stated as follows:

We reject the first contention of Shamrock as we believe Taylor's petition was in sufficient compliance with KRS 341.450(1). It was no more than a technical defect. In *Pickhart v. U.S. Post Office*, Ky.App., 664 S.W.2d 939 (1983), cited by *Shamrock*, there was no attempt at verification. We believe a clear attempt at verification is sufficient, notwithstanding it does not reflect that an oath was rendered to a person authorized to receive same. It is clear the petition filed by Taylor was verified, though not under oath. We believe this to have been sufficient, under the circumstances.

[*Shamrock Coal*, 697 S.W.2d] at 953.

Thus it appears that in *Shamrock Coal*, there was a good faith attempt at verification but that, for reasons the opinion fails to make clear, upon verification there was an irregularity in the administration of the oath. *Id.* The lack of detail in *Shamrock Coal* as to exactly what the defect in the verification was hampers our ability to fully consider the merits of the holding. However, it is apparent that in that case, some definitive effort at verification of the petition was made because the court refers to “a clear attempt at verification.” *Id.* Thus, whereas in *Shamrock Coal*, there was a deliberate and, presumably, good faith effort at verification, here there was no effort at verification at all. As Taylor noted in his motion to amend his petition, “the original Petition herein inadvertently omitted the verification of the Petitioner.” Consequently, *Shamrock Coal* is easily distinguishable from this case. If *Shamrock Coal* is our guide for substantial compliance, Taylor falls short of that mark.

Taylor, 382 S.W.3d at 832-33. There are a number of cases similar to *Taylor* where counsel simply signed the complaint and no attempt at verification was made in which our Court likewise upheld dismissal for failure to verify. However, there are no cases describing an attempted verification similar to that which

occurred here except *Shamrock Coal*. Because Wilson signed a verification statement, after counsel signed the complaint, Wilson made a clear attempt at verification which is sufficient under *Shamrock Coal* to invoke the jurisdiction of the reviewing court. *Shamrock Coal*, 697 S.W.2d at 953.

We reverse and remand for reinstatement of Wilson's verified complaint and review of the Kentucky Unemployment Insurance Commission's ruling denying Wilson's request for unemployment benefits.

ALL CONCUR.

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